THE NATURE OF THE ASSIGNMENT OF FUTURE EARNINGS.—It is a general rule of law that there can be no assignment of non-existent property; thus courts of law will not give effect to an assignment of fish to be caught in the sea, nor of wages to be earned, where there is no present contract of employment.[1] Yet where the subject matter of the assignment has a potential existence, the validity of the assignee's claim is generally conceded. Within this principle is included the assignment of unearned wages based upon a contract of employment.[2] The assignment can only embrace wages to be earned in the present contract of employment.[3] The contract need not be for any definite time to render the assignment valid; even an employment at will being a sufficient basis to support an assignment.[4] The assignment must be for valid consideration,[5] and free from fraud as to creditors of the assignor.[6] An assignment of a part of the wages to be earned, when such an order is not accepted by the employer, is invalid, because the law does not compel a debtor to accept two creditors instead of one.[7] It has been observed that there can be no valid assignment at law where there is no contract of employment. In equity, however, though not an assignment, such an agreement is treated as a contract to assign, thus giving the assignee an equitable lien upon the wages as they are earned.[8]

The precise nature of the assignee's interest is brought out in the cases decided upon the question of whether or not an assignee of future wages has a right to earnings which become payable after a petition followed by a discharge in bankruptcy.[9] Under the

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[1] Mullhall *v.* Quinn, 1 Gray (Mass.) 105, 61 Am. Dec. 414. See also, Farrar *v.* Smith, 64 Me. 74.

[2] Kane *v.* Clough, 36 Mich. 436, 24 Am. Rep. 599; Wellborn *v.* Buck, 114 Ala. 277, 21 So. 786.

[3] Twiss *v.* Cheever, 2 Allen (Mass.) 40; Eagan *v.* Luby, 133 Mass. 543. In the same State, however, it was held that an assignment by a laborer to cover a certain debt, when he was under an existing contract for a definite time, and at the expiration of that time was re-engaged under a new contract at lower wages, covers wages earned under the new contract also. The court based its conclusion on the ground that the employment was continuous, and that a contract for a definite time is not necessary to a valid assignment. Wallace *v.* Heywood Co., 16 Gray (Mass.) 209. To the same effect is the case of Hax *v.* Acme, etc., Co., 82 Mo. App. 447.

[4] Kane *v.* Clough, *supra;* Augur *v.* N. Y., etc., Co., 39 Conn. 536; Wellborn *v.* Buck, *supra.*

[5] Runels *v.* Bosquet, N. I. & S. Co., 60 N. H. 38.

[6] Gragg *v.* Martin, 12 Allen (Mass.) 498, 90 Am. Dec. 164. Though after the assignment it is not a fraud in law for the assignor to continue in his employment under cover of a new contract in order to save his wages from the claim of the assignee.

[7] Germyn *v.* Moffitt, 75 Pa. St. 399; Carter *v.* Nichols, 58 Vt. 552. These decisions are on the ground that the employer is put to an unwarranted inconvenience.

[8] Edwards *v.* Petersen, 80 Me. 367, 14 Atl. 936, 6 Am. St. Rep. 207.

[9] It has recently been decided by the Supreme Court that the discharge when granted relates back to the filing of the petition. Everett *v.* Judson, 228 U. S. 474.

Bankruptcy Act the discharge affects only personal claims and a lien not nullified by the adjudication still attaches to the property after the discharge.[10] In the case of an assignment based upon no contract of employment, it is obvious that the bankrupt has a claim to his subsequent earnings, for the assignment only operates in equity as an equitable lien after the wages are earned.[11] But in the instance of a valid legal assignment, there is a conflict in the decisions. One line of authority holds that there is a present lien upon the wages yet to be earned, and hence that the assignee has a present *in rem* claim upon the wages earned after the filing of the petition.[12] The other line of decisions, with a greater show of reason it would seem, treats the assignee's lien as non-existent until the wages are actually earned, and that as there is no lien at the date of the filing of the petition all wages earned thereafter belong to the bankrupt. If there is no lien at the date of the filing of the petition, the bankrupt act does not keep alive the debt in order that a lien may be created when the wages are earned.[13] Under this holding there is little material difference between an assignment based upon a contract of employment, and an assignment where there is no contract of employment, except that one is enforced in a court of law and the other only in a court of equity.

Also, where it is held that the assignee has a present lien, such lien must necessarily be upon the assignor's contract of employment, of which the future wages are a mere increment, as this is the only property to which an *in rem* claim could attach. Section 70 a (5) of the Bankruptcy Act vests in the trustee the property of the bankrupt "which prior to the filing of the petition he could by any means have transferred." Section 1 a (25) defines "transfer" as "the sale and every other and different mode of disposing of or parting with property or the possession of property, absolutely or conditionally, as a payment, pledge, mortgage, gift, or security." Hence to hold that the bankrupt's contract of employment is "property," which may be transferred, etc., as security, necessarily demands the conclusion that it is property which under § 70 a (5) passes to his trustee. Yet it is settled that wages to accrue therefrom after the date of the filing of the petition do not pass to the trustee. To hold that they did pass would violate the whole spirit of the act, besides being impossible of enforcement.

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[10] Sec. 67 d.

[11] See Edwards *v.* Peterson, *supra.*

[12] Leitch *v.* Northern Pac. Ry. Co., 95 Minn. 35, 103 N. W. 704; Citizens Loan Association *v.* Boston & Me. Ry., 196 Mass. 528, 82 N. E. 696, 124 Am. St. Rep. 584. In Leitch *v.* Northern Pac. Ry. Co., *supra,* the assignment seemed to be invalid, hence, the court's remarks on this point are by way of *dictum.*

[13] In re West, 128 Fed. 205, 11 Am. B. R. 782; In re Home Discount Co., 147 Fed. 538, 17 Am. B. R. 168. The argument is made that it is against the spirit of the Bankruptcy Act to require the bankrupt to abandon his present contract of employment in order to save his future earnings. In re Home Discount Co., *supra.*

Statutes limiting the assignment of wages not yet earned, by requiring notice to the employer and other acts which give greater publicity to the transaction, have been questioned as violating the due process of law clause in the federal and State constitutions. In a recent case the constitutionality of such a statute has been upheld.[14] And such is the general holding of the courts, upon the ground that the evil caused by money sharks' charging exorbitant rates is a legitimate subject for the States' exercise of the police power.[15] In *Heller* v. *Lutz* (Mo.), 164 S. W. 123, the court upheld the constitutionality of a statute forbidding altogether an assignment of unearned wages, and refused to hold that this was a property right within the meaning of the constitutional guaranty. This decision sustains the right of the legislature to enact laws for the protection of the wage earner as a legitimate exercise of the police power.[16]

THE LIABILITY OF CHARITABLE CORPORATIONS FOR THE TORTS OF SERVANTS.—It is frequently asserted, without qualification, that a charitable corporation is not liable for injuries resulting from negligent or tortious acts of a servant in the course of his employment, when due care has been exercised by the corporation in selecting the servant. The contention is that such a corporation, by reason of its philanthropic or benevolent nature, possesses an absolute immunity from the doctrine of *respondeat superior,* regardless of whether the person injured be a beneficiary or a total stranger, provided only the corporation has been guilty of no negligence in the selection of its servants.[1] While true in the main, the proposition thus laid down is entirely too broad, its soundness depending upon whether or not the injured party is a beneficiary of the charity.

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[14] Fay *v.* Bankers' Surety Co. (Minn.), 146 N. W. 359.

[15] McCallum *v.* Simplex Electrical Co., 197 Mass. 338, 83 N. E. 1108; Thompson *v.* Erie R. Co., 207 N. Y. 171, 100 N. E. 791. Where the statute required the assignment to be accepted in writing by the employer, and for the wife's assent, if the assignor be a married man, to accompany the assignment. *Held,* the statute is constitutional. The legislature has the power to exercise the police power in furtherance of the general welfare. Mutual Loan Co. *v.* Martell, 222 U. S. 225, 32 Sup. Ct. 74. In Illinois such a statute was held unconstitutional, it seems, because its terms embraced salaries as well as wages, and was not a justifiable exercise of the police power. Massie *v.* Cessna, 239 Ill. 352, 88 N. E. 152, 130 Am. St. Rep. 234.

[16] Such a statute prevents the exorbitant loans being exacted by money sharks, and at the same time, by preventing the assignment, keeps before the laborer the stimulus to work, thus benefiting both employee and employer. Int. Text Book Co. *v.* Weissinger, 160 Ind. 349, 65 N. E. 521, 98 Am. St. Rep. 334.

[1] Gable *v.* Sisters of St. Francis, 227 Pa. St. 254, 75 Atl. 1087; Whittaker *v.* St. Luke's Hospital, 137 Mo. App. 116, 117 S. W. 1189; Jensen *v.* Maine, etc., Infirmary, 107 Me. 408, 78 Atl. 898, 33 L. R. A. (N. S.) 141.